

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charles Duerr	Team: Team # 4	CCRB Case #: 200616893	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 11/12/2006 11:30 PM, Monday, 11/13/2006	Location of Incident: West 117th Street and 5th Avenue	Precinct: 25	18 Mo. SOL 5/12/2008	EO SOL 5/12/2008	
Date/Time CV Reported Tue, 12/19/2006 7:38 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 12/19/2006 7:38 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Christophe Schmidt	00000	907284	PBMN TF
2. POM Wilfred Garcia	06107	923862	PBMN TF
3. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Miroslav Maric	10128	932957	PBMN
2. POM Peter Bolte	30919	933649	PBMN TF
3. POM Adnan Radoncic	18469	930995	PBMN TF

Officer(s)	Allegation	Investigator Recommendation
A.LT Christophe Schmidt	Force: Lieutenant Christopher Schmidt used physical force against § 87(2)(b)	
B.POM Wilfred Garcia	Force: PO Wilfred Garcia used physical force against § 87(2)(b)	
C. An officer	Discourtesy: An officer spoke rudely to § 87(2)(b)	
D. An officer	Force: An officer used physical force against § 87(2)(b)	

Synopsis

On November 12, 2006, at approximately 11:30 PM, § 87(2)(b) was walking down East 117th Street near the corner of 5th Avenue in Manhattan with his friend § 87(2)(b). Two marked police cars and an unmarked Chevrolet pulled up to them and § 87(2)(b) immediately ran away while PO Miroslav Maric and PO Adnan Radoncic arrested § 87(2)(b). PO Peter Bolte chased after § 87(2)(b) on foot as he headed east on 117th Street. As § 87(2)(b) approached Madison Avenue, a marked patrol car cut him off and Lieutenant Christopher Schmidt exited the vehicle and chased after § 87(2)(b). Lieutenant Schmidt tackled § 87(2)(b) from his left side and brought him to the ground (allegation A). While § 87(2)(b) was on the ground, he was punched and kicked in the face and body by Lieutenant Schmidt and PO Wilfred Garcia (again allegation A and allegation B). While § 87(2)(b) was being handcuffed, a plainclothes officer said, “Yeah we got your ass. Fuck you, you little bastard. Stupid” (allegation C). After § 87(2)(b) was handcuffed, an officer punched him three times in the left side of his face (allegation D). § 87(2)(b) was taken to the precinct and charged with possession of a weapon.

§ 87(2)(g)

This case was originally assigned to Investigator Leah Abeles. Following Investigator Abeles’ resignation from the agency, the case was reassigned to the undersigned investigator on September 4, 2007.

Summary of Complaint

§ 87(2)(b) filed this complaint via the CCRB call processing system on December 19, 2006 (see enclosures 6a – 6b). § 87(2)(b) filed the complaint on behalf of § 87(2)(b) but she was not a witness to the incident.

§ 87(2)(b) was interviewed in the presence of his criminal attorney, § 87(2)(b) § 87(2)(b) on January 29, 2007 (see enclosures 7a – 7e). Because § 87(2)(b)’s criminal charges were still pending at the time of his interview, § 87(2)(b) advised him not to speak on the events leading up to his arrest on November 12, 2006. § 87(2)(g)

§ 87(2)(b) stated that at approximately 11:45 PM on November 12, 2006, he was walking down E. 117th Street at the corner of 5th Avenue in Manhattan with his friend, § 87(2)(b). There were two marked police vehicles at the location and an unmarked black Chevrolet Impala then pulled up. There were three officers in this vehicle. § 87(2)(b) describes one of the officers in this vehicle (PO #1) as a 5’10” white male dressed in a gray sweater and blue jeans. PO #1 had gray hair, was clean-shaven, and had an average build. He appeared to be in his thirties.

Officers arrested § 87(2)(b) at the corner of E. 117th Street and 5th Avenue. However, § 87(2)(b) did not see this because, upon seeing the officers, he immediately ran from the scene because he “got nervous.” One of the marked vehicles followed after § 87(2)(b) while one of its occupants, PO Peter Bolte (identified during the investigation and described as a white male with glasses, 6’0”, average build), chased after § 87(2)(b) on foot. § 87(2)(b) believed that PO Bolte was a “rookie” because later, when § 87(2)(b) was in the hospital, he heard another officer state to PO Bolte, “Good job, rook.”

§ 87(2)(b) proceeded down E. 117th Street toward Madison Avenue and continued on toward Park Avenue. When § 87(2)(b) reached E. 117th Street and Park Avenue, the marked vehicle that had been following behind him “cut off the corner” and Lieutenant Christopher Schmidt (identified during the investigation and described as a Hispanic male, chubby build, 6’0”, mustache and beard, in uniform) exited. § 87(2)(b) turned right and continued running. Lieutenant Schmidt ran after § 87(2)(b) and

tackled him from his left side, bringing him to the ground. § 87(2)(b) fell onto his right shoulder, so that he was lying on his right side. He believes that when he struck the ground, he fractured his collarbone and scraped his face on the ground, causing an abrasion to the area near his sideburn on his right cheekbone. The unmarked black Impala then arrived at § 87(2)(b)'s location, as did an unmarked Jeep SUV and PO Bolte, who was on foot. PO #1, PO Bolte, and PO Wilfred Garcia (identified during the investigation and described as a white male) approached § 87(2)(b) who was sitting inside the unmarked Jeep with PO #2, who was driving the vehicle. § 87(2)(b) could not provide a detailed physical description of this officer, but states that he was a white male. This officer stopped the Jeep about halfway between Park Avenue and Madison Avenue on E. 117th Street, though § 87(2)(b) believed that § 87(2)(b) would have been able to see Lieutenant Schmidt tackle him from where the Jeep was parked. § 87(2)(b) does not have § 87(2)(b)'s address or phone number, however.

§ 87(2)(b) was kicked and hit with closed fists as he lay on the ground. PO #1, PO Bolte, Lieutenant Schmidt, and possibly PO Garcia were "on" him at this time, but he does not know which of them were involved in hitting and kicking him. § 87(2)(b) is unable to estimate about how many times he was kicked and hit, but states that he was punched over five times. He was kicked "all over except for my legs" and was punched in his back and shoulders and in his face in the vicinity of his left cheekbone. § 87(2)(b) did not sustain any injuries as a result of being kicked. As the officers began to hit him, § 87(2)(b) "turned around" so that he was lying on his stomach. His arms were "on the floor" at his sides and § 87(2)(b) was "waiting for them to handcuff me." However, they continued to hit him. § 87(2)(b) then placed his hands behind his back. His hands were never beneath his body at any point and the officers did not grab his hands as they hit him. After the officers had been hitting and kicking § 87(2)(b) for about five to eight minutes, they handcuffed him. During the five to eight minutes before he was handcuffed, § 87(2)(b) did not move his body in anyway, but told the officers, "Chill. I already got my arms behind my back." While hitting and kicking § 87(2)(b) PO #1 cursed repeatedly, making statements such as, "Yeah, we got your ass. Fuck you, you little bastard. Stupid." Lieutenant Schmidt also cursed at § 87(2)(b) though § 87(2)(b) does not recall specifically what statements he made.

After handcuffing § 87(2)(b) the officers continued to hit him with closed fists, though he was not moving his body in any way at this time. He states that he did not resist in any manner, other than initially fleeing the officers. After being handcuffed, § 87(2)(b) was struck three times in the left side of his face, in the cheek and near his hairline. § 87(2)(b) does not know which of the officers struck him after he was handcuffed because his head was turned toward his left with his right cheek against the pavement. He did not sustain any bruising as a result of being struck after he was handcuffed.

After § 87(2)(b) had been lying on the ground for about five minutes after being handcuffed, the officers picked him up and escorted him to the unmarked Jeep SUV. § 87(2)(b) did not see any civilians in the area who might have witnessed the force used against him. The officers began "looking for something" on the ground in the vicinity of E. 117th Street and 5th Avenue. § 87(2)(b) does not know which of the officers participated in searching that area. § 87(2)(b)'s attorney, § 87(2)(b) would not allow him to answer any further questions regarding the officers' search of the ground.

After the officers had finished searching, § 87(2)(b) was placed inside the Jeep with § 87(2)(b) and PO #2. PO #1 also rode in the vehicle as the Jeep's driver transported § 87(2)(b) and § 87(2)(b) to the precinct, where § 87(2)(b) was charged § 87(2)(b).

Once at the precinct, § 87(2)(b) requested to go to the hospital. EMS did not examine § 87(2)(b) at the precinct, but about an hour after arriving at the station house, he was transported to the § 87(2)(b) for medical treatment, where he underwent x-rays and was administered Advil. As detailed earlier, § 87(2)(b) suffered a fractured collarbone and an abrasion to his face as a result of the incident. § 87(2)(b) was told to take Motrin for his collarbone and wear a sling. The abrasion to § 87(2)(b)'s face was treated with ointment and a Band-Aid at the hospital. At the time of his interview, he exhibited a visible scar by his sideburn that he stated resulted from the abrasion he sustained on November 12, 2006. § 87(2)(b) did not receive any further medical treatment after his release from § 87(2)(b). § 87(2)(b) did not observe any injuries to § 87(2)(b) and § 87(2)(b) did not complain to him of any injury.

Results of Investigation

Civilian Statements:

§ 87(2)(b)

§ 87(2)(b) was contacted by the CCRB on April 17, 2007 (see enclosure 8). He provided the following phone statement regarding the events of November 12, 2006. The unmarked Crown Victoria in which § 87(2)(b) was riding arrived at the location at which officers had apprehended § 87(2)(b). There were two white male plainclothes officers in the vehicle with § 87(2)(b). When § 87(2)(b) arrived at § 87(2)(b)'s location, § 87(2)(b) was lying on the ground on his stomach. About seven police officers were surrounding § 87(2)(b). About five of these officers were dressed in uniform and about two to three officers were dressed in plainclothes. About two of the uniformed officers had their knees on § 87(2)(b)'s back and another had his knee on § 87(2)(b)'s shoulder. The officers were also pulling § 87(2)(b)'s arms behind him "in the air" so that "he wouldn't resist arrest." The officers were trying to handcuff § 87(2)(b) who was not struggling. § 87(2)(b) felt that § 87(2)(b) "couldn't" struggle "because there was seven of them on him." § 87(2)(b) stated that § 87(2)(b) "was giving them his arm, but I guess they beat him up because he made them run." § 87(2)(b) admitted that he did not see the officers beat up § 87(2)(b). However, he observed a scrape to § 87(2)(b)'s cheek. § 87(2)(b) could not remember which cheek was injured and did not see how § 87(2)(b) sustained this injury. He did not observe any other injury to § 87(2)(b).

The officers stood § 87(2)(b) up and placed him against a pole supporting the elevated LIRR train track. Uniformed officers then "check[ed] him to see if he had any other stuff on him." The officers handcuffed § 87(2)(b) while he was still standing against the pole, about five minutes after § 87(2)(b) had arrived on the scene. § 87(2)(b) could not hear anything that was said between the officers and § 87(2)(b) at any time.

A plainclothes officer opened the door to the vehicle in which § 87(2)(b) was sitting and "threw" § 87(2)(b) into the vehicle. § 87(2)(b) described the officer that did this as a white male with a medium build. He was wearing black jeans, a sweater, and an NYPD sweat jacket. § 87(2)(b) could not recall any further details of the officer's physical description, but stated that this officer was one of the ones that had been surrounding § 87(2)(b) when § 87(2)(b) arrived on the scene. § 87(2)(b) landed in the vehicle with his head against § 87(2)(b)'s ribcage. He was unable to sit up and stated that this was because his arm hurt. No other officer was in the vehicle with § 87(2)(b) and § 87(2)(b) when § 87(2)(b) complained of the pain in his arm and § 87(2)(b) did not hear § 87(2)(b) complain of pain to any officer.

§ 87(2)(b)

§ 87(2)(b) contacted the CCRB on April 18, 2007 in response to a prior attempt to contact him (see enclosure 10). He stated that at about 10:30 or 11:00 PM on November 12, 2006, he was talking on the phone in the parlor of his house when he heard the sound of a shotgun blast outside his window. § 87(2)(b) stated that he is familiar with guns and was therefore able to identify the gun being fired as a shotgun. § 87(2)(b) looked out the window, which is nearly level with the street, and saw three dark-skinned males, one of whom was wearing a jacket bearing the number 23, in front of his house. § 87(2)(b) could not recall if he saw a gun in the men's possession at this time. However, a video camera installed at § 87(2)(b)'s residence recorded the incident and, in the video, a gun is visible. § 87(2)(b) turned this video over to the police.

When § 87(2)(b) looked out the window, all three men began running eastbound on West 119th Street and then appeared to turn right on Lenox Avenue heading southbound. § 87(2)(b) hung up the phone, called 911, informed the operator of what had happened, and then gave the direction in which the three suspects were running. About one and a half to two minutes later, § 87(2)(b) saw a marked police vehicle with flashing lights drive down Lenox Avenue. "Not too much longer" thereafter, he saw a marked police van

driving down West 119th Street. § 87(2)(b) did not see any officers exit either of these vehicles and did not see any officers on foot.

§ 87(2)(b) did not see any of the three males being arrested, but at about midnight, he received a call from police thanking him for reporting the incident and stating that they had caught the perpetrators. § 87(2)(b) later testified to a grand jury in relation to this incident.

Officer Identification

PO Miroslav Maric was identified from § 87(2)(b)'s arrest report (see enclosures 27a – 27b). PO Peter Bolte was identified by the Patrol Borough Manhattan North Anti-Crime (182) roll call (see enclosure 22a). Lieutenant Christopher Schmidt was identified from the Patrol Borough Manhattan North Task Force (137) roll call and PO Maric's statement (see enclosure 23a). PO Wilfred Garcia was identified from Lieutenant Schmidt's CCRB statement. PO Adnan Radonic was identified by PO Maric's statement and the Patrol Borough Manhattan North Anti-Crime roll call.

Officer Statements:

PO Miroslav Maric

PO Miroslav Maric was interviewed at the CCRB on May 29, 2007 (see enclosure 11a – 11f). On November 12, 2006, PO Maric was assigned to Patrol Borough Manhattan North. He began working at 5:30 PM that day and ended his tour at 2:05 AM on November 13, 2006. During this tour, PO Maric was dressed in uniform and was assigned to the auto larceny patrol car, which was a blue Ford Crown Victoria, with PO Peter Bolte and PO Adnan Radonic.

At 11:39 PM on November 13, 2006 a call describing shots fired was reported over the division radio. The location of the incident was given as the vicinity of Lenox Avenue and West 119th Street within the confines of the 28th Precinct. It was not indicated how many suspects were involved in the incident, but a description was given of one suspect as a black male wearing a red leather jacket bearing the number 25. PO Maric, PO Bolte, and PO Radonic responded to the incident location. They were the only Patrol Borough Manhattan North team working that day, so no other officers from their command also responded. PO Maric believed that Lieutenant Christopher Schmidt from Patrol Borough Manhattan North Task Force responded to the scene before he and his partners arrived, as Lieutenant Schmidt "made the initial contact with the complainant." PO Maric does not know which officer was assigned as Lieutenant Schmidt's operator at the time of this incident.

After responding to Lenox Avenue and West 119th Street, PO Maric, PO Bolte, and PO Radonic began "patrolling around the area," heading eastbound in their vehicle on W. 119th Street and then proceeding southbound on 5th Avenue. Other units were also involved in canvassing the area. PO Maric does not know which units these were, but believes that units from both the 25th Precinct and the 28th Precinct responded to the radio call. As PO Maric, PO Bolte, and PO Radonic were driving southbound on 5th Avenue, they observed a male civilian matching the description that had been given of the suspect walking southbound on 5th Avenue toward the northwest corner of W. 117th Street. The civilian was walking with one other person, whom PO Maric describes as a black male wearing a "big, heavy" black winter coat. PO Maric did not see any firearms in either of the two men's possession at this time.

PO Maric, who was driving the unmarked vehicle, proceeded to the northwest corner of 5th Avenue and West 117th Street and stopped his car. All three officers exited the vehicle and stated to the two civilians, "Police. Don't move." The civilian wearing the red jacket bearing the number 25 stopped immediately, but the other civilian immediately "took off running" eastbound on the north side of East 117th Street. PO Bolte immediately ran after him, while PO Maric and PO Radonic apprehended the civilian wearing the red jacket, who was identified through the investigation as § 87(2)(b). § 87(2)(b) did not resist arrest. After PO Maric and PO Radonic had handcuffed § 87(2)(b) about twenty to thirty seconds after PO Bolte had run after the civilian wearing the black coat, PO Maric ran after PO Bolte, who was about thirty feet behind the civilian he was pursuing. PO Maric estimates that there was approximately

fifty yards between him and PO Bolte as both of them ran after the suspect. As PO Maric ran after PO Bolte and the civilian wearing the black coat, who was identified through the investigation as § 87(2)(b), PO Radoncic placed § 87(2)(b) in the unmarked vehicle and proceeded after PO Maric and PO Bolte in the vehicle.

As PO Maric and PO Bolte chased § 87(2)(b) the officers “put over the foot pursuit over the air.” As PO Maric and PO Bolte continued running after § 87(2)(b) a marked patrol vehicle passed them at the corner of East 117th Street and 5th Avenue. PO Maric believes that this was the vehicle driven by Lieutenant Schmidt and his operator. § 87(2)(b) “jumped over” the hood of the patrol vehicle, after which time two additional marked vehicles from the 25th Precinct then arrived on scene and nearly “crashed into” the first patrol car. PO Maric initially stated that he did not remember any officers besides him and PO Bolte pursuing § 87(2)(b) on foot, but later stated that two officers exited the vehicle that § 87(2)(b) jumped over after he did so and proceeded after him on foot. PO Maric does not know if any of the officers in the vehicles from the 25th Precinct exited their cars.

As § 87(2)(b) ran past the northeast corner of East 117th Street and Madison Avenue, PO Maric saw him remove what he believed was a shotgun from inside his coat. § 87(2)(b) dropped the weapon on the ground and continued running eastbound on East 117th Street. PO Maric estimates that he was about forty to fifty yards behind the suspect when this occurred.

As PO Maric neared the southwest corner of East 117th Street and Park Avenue, which is located within the confines of the 25th Precinct, he observed that § 87(2)(b) was already handcuffed and lying prone on the ground. When asked about § 87(2)(b)'s demeanor, PO Maric stated that he was “tired from running.” There were “a number” of officers present, including PO Bolte and Lieutenant Schmidt, though PO Maric cannot identify any of the other officers that were there. It was after this point that PO Radoncic “caught up to” PO Maric and PO Bolte. Neither PO Radoncic nor PO Maric was involved in apprehending § 87(2)(b). PO Maric did not know which officer or officers were involved in apprehending § 87(2)(b).

When PO Maric, PO Bolte, and one other officer attempted to bring § 87(2)(b) to his feet, he “was being uncompliant,” refusing to “stand up on his own free will.” The three officers grabbed § 87(2)(b) by his arms to lift him to his feet. They then placed him in PO Maric, PO Bolte, and PO Radoncic’s vehicle to be transported to the 32nd Precinct. PO Maric did not have any other physical contact with § 87(2)(b) and did not see any other physical force used against him. PO Maric never punched or kicked § 87(2)(b) or saw any other officer do so. He does not remember hearing any officer use profanity toward § 87(2)(b) and did not hear any officer say, “Yeah, we got your ass. Fuck you, you little bastard. Stupid.” PO Maric never made this statement.

After placing § 87(2)(b) in a vehicle, PO Maric and PO Bolte recovered a twelve-gauge shotgun beneath a car that was parked at Madison Avenue and West 117th Street. They then transported § 87(2)(b) to the 32nd Precinct, where he complained that his shoulder hurt. EMS was called to the precinct and § 87(2)(b) received medical treatment. PO Maric later learned that § 87(2)(b) suffered a fractured shoulder, though he is not aware of how this injury was sustained. PO Maric does not remember observing any other injuries to the suspect’s person.

PO Peter Bolte

PO Peter Bolte was interviewed at the CCRB on June 4, 2007 (see enclosures 12a – 12d). PO Bolte worked from 5:30 PM on November 12, 2006 to 2:05 AM on November 13, 2006, during which he was assigned to patrol the 25th, 28th, and 32nd Precincts. PO Bolte was working with PO Miroslav Maric and PO Adnan Radoncic. He was dressed in uniform and was assigned to an unmarked blue Ford Crown Victoria, which PO Radoncic was driving.

At approximately 11:30 PM, PO Bolte, PO Maric, and PO Radoncic heard a radio run reporting shots fired. It was stated that two perpetrators were walking together southbound on 7th Avenue. A description was given of one of the perpetrators as a black male wearing a red jacket bearing the number 25 on its back.

The second perpetrator was also described as a black male, though the description of him “wasn’t as clear” as the description of the first perpetrator.

Because this incident occurred during most other commands’ change of tours, the three officers proceeded toward the location given and were the first officers to arrive on the scene. PO Bolte cannot recall exactly to what location he and his partners responded, but believes they proceeded to 7th Avenue and West 117th Street and then canvassed the area for approximately one minute. When the three officers arrived at 7th Avenue and West 117th Street, PO Bolte observed two civilians, who exactly matched the descriptions given of the two perpetrators, walking southbound on the west side of 7th Avenue. PO Bolte pointed the two individuals out to his partners and then he, PO Maric, and PO Radoncic pulled around the corner to cut the two suspects off with their vehicle. PO Bolte and PO Maric stepped out of the car and identified themselves as police officers. At this time, the individual wearing the red jacket bearing the number 25, who was identified through the investigation as § 87(2)(b) was holding his hand near his chest beneath his jacket, which was zipped. PO Bolte could see that he was holding something, though he could not see what this object was. PO Bolte asked the two suspects to show him their hands. However, § 87(2)(b) immediately fled the scene, running eastbound on West 117th Street. PO Bolte chased after him on foot for four blocks. PO Maric and PO Radoncic arrested the other individual, identified through the investigation as § 87(2)(b) at the location at which he had been stopped. PO Bolte did not assist in § 87(2)(b)’s apprehension.

PO Bolte radioed in the pursuit as he chased § 87(2)(b). He does not know if any other officers joined in the foot pursuit because he was closest behind § 87(2)(b). About a block before reaching Park Avenue, § 87(2)(b) removed a sawed-off shotgun from underneath his jacket and threw it into a pile of garbage sitting at the curb. PO Bolte was about thirty to forty feet behind § 87(2)(b) at this time and continued running after him. When § 87(2)(b) reached Park Avenue, a marked police vehicle cut in front of him in an attempt to stop him. PO Bolte does not know to which command this vehicle was assigned and does not know which officers were inside it. § 87(2)(b) leapt and dove across the hood of the vehicle onto the side of his stomach. § 87(2)(b) slid across the hood and then fell off on the other side of the vehicle and out of PO Bolte’s view. PO Bolte was about thirty feet behind § 87(2)(b) when this occurred. The two officers in the vehicle exited and proceeded to where § 87(2)(b) had fallen, though PO Bolte was unable to see what further action they took after this point. About two to three other officers also ran to where § 87(2)(b) had fallen.

PO Bolte continued running. When he reached Park Avenue, there were four to five marked police units present at that location. PO Bolte did not see any plainclothes units on the scene. He saw one vehicle from Patrol Borough Manhattan North Task Force and several vehicles from both the 25th and 28th Precincts. No other units from PO Bolte’s command responded to this incident at any point. When PO Bolte reached § 87(2)(b)’s location, he found him lying on the ground on his stomach with his hands rear-handcuffed. This was the first time PO Bolte had seen § 87(2)(b) since he had slid over the hood of the police vehicle and out of PO Bolte’s view. § 87(2)(b) was not resisting at this time. PO Bolte did not see which officer or officers handcuffed § 87(2)(b) and none of the officers on the scene informed him of how § 87(2)(b) was apprehended. PO Bolte did not use or see any force used against § 87(2)(b) after he was handcuffed. He did not see any officer punch or kick § 87(2)(b).

PO Bolte did not speak directly with § 87(2)(b) while on the scene, though “a couple” of other officers spoke with him. PO Bolte had seen these officers before and identified them as being assigned to either the 25th or 28th Precinct, but cannot describe them and does not know their names. He notes that he did not “take notice” which officers spoke with § 87(2)(b) because he was “a little out of breath.” PO Bolte did not hear any officer tell § 87(2)(b) “Yeah, we got your ass. Fuck you, you little bastard,” and he did not make this statement himself. He did not call § 87(2)(b) “stupid” or hear any other officer do so.

PO Bolte never spoke with the complainant in the report of shots fired, but states that, prior to the apprehension of § 87(2)(b) and § 87(2)(b) a lieutenant from Patrol Borough Manhattan North Task Force was the first unit to respond to the complainant’s residence and spoke with the complainant at that time. PO Maric also spoke with the complainant sometime after the suspects were apprehended. When PO Bolte and § 87(2)(b) got back to the station house, § 87(2)(b) stated that he had hurt his shoulder. PO

Bolte does not know how § 87(2)(b) sustained the injury to his shoulder, but guesses that § 87(2)(b)'s shoulder was injured when he fell off the top of the police vehicle after sliding over the hood.

§ 87(2)(b) was transported to the hospital from the station house. At the hospital, the hospital staff informed PO Bolte that § 87(2)(b) might have a dislocated shoulder, but stated that they were not sure and needed to perform an MRI on him. PO Bolte did not observe any other injuries to § 87(2)(b).

Lieutenant Christopher Schmidt

Lieutenant Christopher Schmidt was interviewed at the CCRB on July 25, 2007 (see enclosures 13a – 13d). Lieutenant Schmidt worked from 5:30 PM on November 12, 2006 to 2:05 AM on November 13, 2006, during which tour he was assigned as the platoon commander of Patrol Borough Manhattan North Task Force. Lieutenant Schmidt was working in uniform out of a marked patrol car, which he was driving, and was partnered with PO Wilfred Garcia. At approximately 11:30 PM on November 12, 2006, a 911 call was placed reporting shots fired by a man with a gun in the vicinity of Lenox Avenue and either West 118th Street or West 120th Street. Descriptions were given of two perpetrators as young black males. A clothing description was also provided, though Lieutenant Schmidt cannot recall how the clothing was described.

Upon receiving this call, Lieutenant Schmidt and PO Garcia proceeded to the location given. They asked two bystanders in the area if they had heard shots fired. Lieutenant Schmidt did not obtain these individuals' names. The people with whom he spoke said that they had heard shots fired and pointed toward 7th Avenue, but told him that they had not seen anything. Lieutenant Schmidt and PO Garcia canvassed the area for several minutes. During this time, Lieutenant Schmidt saw the Auto Larceny unit also canvassing in their vehicle. Within ten minutes after Lieutenant Schmidt and PO Garcia responded to the scene, they received a radio call from the Auto Larceny unit stating that it had observed two people fitting the descriptions given of the perpetrators on 5th Avenue in the vicinity of either West 118th Street or West 119th Street. Several moments later, the Auto Larceny unit transmitted a second call stating that it was involved in a foot pursuit of one of the suspects eastbound on East 118th Street. Lieutenant Schmidt and PO Garcia, who were in vicinity of East 116th Street and Madison Avenue when they received this transmission, proceeded northbound on Madison Avenue and "spotted" the suspect, who was identified through the investigation as § 87(2)(b) running eastbound across Madison Avenue on the northern side of East 117th Street toward Park Avenue. He was carrying a shotgun in his hand, though he was not pointing it at anything. Lieutenant Schmidt cannot describe what § 87(2)(b) was wearing. An unknown number of officers were chasing § 87(2)(b) on foot, but were at least half a block behind him. Lieutenant Schmidt believes these were officers from the Auto Larceny unit and states that they were wearing raid jackets over what he thinks were plainclothes. No other officers were pursuing § 87(2)(b) by car.

Lieutenant Schmidt turned onto East 117th Street and yelled at § 87(2)(b) to drop the shotgun. While doing this, Lieutenant Schmidt was also trying to unholster his own firearm, as he was concerned for his and PO Garcia's safety. § 87(2)(b) did not react to Lieutenant Schmidt's instructions to drop his weapon. When Lieutenant Schmidt and PO Garcia reached the middle of the block, Lieutenant Schmidt heard the sound of metal hitting the ground. He later determined that this sound resulted from § 87(2)(b) dropping the shotgun. As § 87(2)(b) continued running eastbound on East 117th Street toward Park Avenue, he began holding his waistband with his right hand, which caused Lieutenant Schmidt to think that he was possibly in possession of a second gun. However, he determined later that § 87(2)(b) had been holding onto his cell phone, which was tucked in his waistband.

When Lieutenant Schmidt and PO Garcia reached East 117th Street and Park Avenue, Lieutenant Schmidt stopped the car "around the crosswalk" and both officers began to "jump out of" the vehicle. § 87(2)(b) turned right onto Park Avenue, passed in front of Lieutenant Schmidt and PO Garcia's vehicle, and proceeded southbound toward East 116th Street beneath the Metro North railroad tracks. He did not make contact with Lieutenant Schmidt and PO Garcia's vehicle as he did this or at any time. Lieutenant Schmidt ran after § 87(2)(b) who had not stopped running, for half a block and then tackled him around the waist from the right side on Park Avenue between East 116th Street and East 117th Street. Both Lieutenant Schmidt and § 87(2)(b) fell to the ground, with § 87(2)(b)'s left side hitting the ground and

Lieutenant Schmidt landing directly on top of § 87(2)(b). § 87(2)(b) ceased holding his waistband, but continued his attempts to “get away,” by attempting to push Lieutenant Schmidt off of him and by trying to hit him, though “from his angle, it was hard for him to throw a punch” at Lieutenant Schmidt. Lieutenant Schmidt used force to keep § 87(2)(b) on the ground and hit him with a closed fist at least three times in the face. Lieutenant Schmidt could not say where on § 87(2)(b)’s face he punched him. Lieutenant Schmidt states, “Basically, he was fighting me on the ground and I fought him back.” Lieutenant Schmidt notes that, at this time, he still believed it was possible that § 87(2)(b) was in possession of another gun and that, for this reason, he “wasn’t going to let him get his hands free.”

§ 87(2)(b) did not stop resisting upon being punched, but continued pushing off of Lieutenant Schmidt and struggling to get away. Within about ten seconds, PO Garcia arrived and “ended up jumping on” § 87(2)(b) to assist Lieutenant Schmidt in apprehending him. Lieutenant Schmidt explains that there was a delay in PO Garcia’s arrival at the location at which Lieutenant Schmidt had tackled § 87(2)(b). This occurred because, as Lieutenant Schmidt later learned from PO Garcia, he had left his vehicle in drive when he and PO Garcia got out of the car at the corner of East 117th Street and Park Avenue. The car began rolling toward the pillars supporting the Metro North tracks, which Lieutenant Schmidt saw happen “peripherally” at the time of the incident. PO Garcia noticed this and managed to “jump into the front seat and stop the car” before it collided with the pillars. It was only after this that he came to Lieutenant Schmidt’s aid in subduing § 87(2)(b).

PO Garcia grabbed one of § 87(2)(b)’s arms and Lieutenant Schmidt was then able to grab § 87(2)(b)’s other arm. The two officers then placed § 87(2)(b) in handcuffs. The Auto Larceny unit, as well as other units, arrived on the scene just as Lieutenant Schmidt and PO Garcia were handcuffing § 87(2)(b). The entire struggle lasted about twenty seconds. Lieutenant Schmidt states that “for the most part,” only he and PO Garcia were involved in handcuffing § 87(2)(b). Lieutenant Schmidt did not see any officer besides himself punch § 87(2)(b). Neither Lieutenant Schmidt nor any other officer kicked § 87(2)(b) at any time. Lieutenant Schmidt notes that he was too close to § 87(2)(b) to kick him.

After § 87(2)(b) was handcuffed, he “was still going around” and “didn’t want to stand up.” Lieutenant Schmidt and PO Garcia instructed § 87(2)(b) to stand up, but he stated, “Fuck you,” and “was being defiant at that point to orders to get up and go to the car.” Lieutenant Schmidt and PO Garcia “had to yank § 87(2)(b) up.” Lieutenant Schmidt does not specifically recall any officer using profanity during this incident. He states that he “might have” used profanity during the incident, but does not recall if he did so. However, he never told § 87(2)(b) “Yeah, we got your ass. Fuck you, you little bastard. Stupid,” and does not recall any officer making this statement to him.

§ 87(2)(b) was searched immediately after being handcuffed, at which time Lieutenant Schmidt noticed that there was a cell phone lying on the ground and that this was what § 87(2)(b) had been clutching at his waistband as he fled. Less than a minute after § 87(2)(b) had been handcuffed, Lieutenant Schmidt “half-ran” to the middle of the block of East 117th Street between Park Avenue and Madison Avenue, where he had heard “the clink” while pursuing § 87(2)(b). He found a shotgun with a spent shell lying on the north side of the street, leaning “right against the curb.”

The Auto Larceny unit also stopped § 87(2)(b)’s partner, who was identified through the investigation as § 87(2)(b) on 5th Avenue, so there were two arrests ultimately made with relation to this incident, though Lieutenant Schmidt did not witness the Auto Larceny’s apprehension of § 87(2)(b). After both arrests had been effected, Lieutenant Schmidt proceeded to the 32nd Precinct station house. He believes that the Auto Larceny unit transported § 87(2)(b) to the 32nd Precinct station house. From the station house, Lieutenant Schmidt called the original 911 complainant by phone. He did not have any further interaction with § 87(2)(b). After about twenty minutes at the station house, he returned to patrol.

§ 87(2)(b). Lieutenant Schmidt does not remember seeing any visible injury to § 87(2)(b) and never heard him complain of pain or injury. Lieutenant Schmidt was shown the arrest photograph of § 87(2)(b) and confirmed that he was the individual he apprehended on November 12, 2006. Lieutenant Schmidt does not recall seeing the injury depicted in § 87(2)(b)’s arrest photograph. Lieutenant Schmidt states that he learned later when § 87(2)(b)’s criminal case was

brought before a grand jury that the Auto Larceny unit either obtained medical treatment for § 87(2)(b) or transported him to the hospital. He was not aware on § 87(2)(b) that § 87(2)(b) required medical treatment. He was not aware at the time of his interview that § 87(2)(b) was diagnosed with a fractured collarbone. He states that § 87(2)(b) probably sustained this injury when he tackled him or during the subsequent struggle.

PO Wilfred Garcia

PO Wilfred Garcia was interviewed at the CCRB on July 6, 2007 (see enclosures 14a – 14d). On November 12, 2006, PO Garcia worked from 5:30 PM to 2:05 AM. PO Garcia was working as the lieutenant operator and was working with Lieutenant Christopher Schmidt.

On November 12, 2006, at approximately 11:30 PM, PO Garcia and Lieutenant Schmidt heard a call over the radio regarding shots fired at 119th Street and 7th Avenue. PO Garcia recalled that a description was given of the shooter but he could not recall what the description was, but thought that it might have dealt with a jacket with and an eight ball on it. They responded to the scene and began to canvass the area by driving around in a two block radius. They spoke with one male who stated he heard a loud bang and pointed west towards St. Nicholas Avenue. After about 1 minute, they heard over the radio that there was a foot pursuit and officers were chasing one perp south on 5th Avenue. PO Garcia and Lieutenant Schmidt turned onto 117th Street and saw two plainclothes officers running east on 117th Street and yelling “He’s going that way.” PO Garcia first observed § 87(2)(b) near the corner of 117th Street and Madison Avenue. PO Garcia described § 87(2)(b) as a Black male, 5’8”, thin build. § 87(2)(b) was holding his waist with his right hand. When § 87(2)(b) was about 20-30 feet away from Madison Avenue on 117th Street, he observed PO Garcia and Lieutenant Schmidt and ducked behind some cars and was out of PO Garcia’s sight for approximately 4-5 seconds. § 87(2)(b) continued to run west on 117th Street and PO Garcia and Lieutenant Schmidt were yelling, “Police, stop.”

When PO Garcia and Lieutenant Schmidt reached the corner of 117th Street and Park Avenue, Lieutenant Schmidt jumped out of the car and chased § 87(2)(b) south on Park Avenue, although PO Garcia stated that he could not see § 87(2)(b). When Lieutenant Schmidt got out of the driver’s side of the vehicle to chase § 87(2)(b) he left the car in drive and continued to move. PO Garcia jumped out of the passenger’s seat and ran around to the driver’s seat. When he got into the driver’s seat, PO Garcia looked to the right and saw Lieutenant Schmidt and § 87(2)(b) on the ground fighting. Lieutenant Schmidt had his arms wrapped around § 87(2)(b) from behind and § 87(2)(b) was swinging his arms to try to get free. Both Lieutenant Schmidt and § 87(2)(b) were laying on their sides. After PO Garcia put the vehicle in park, he went over and tried to grab § 87(2)(b)’s arm and place him in handcuffs, but § 87(2)(b) would not give up his right arm and was swinging his left arm. PO Garcia pulled § 87(2)(b)’s left arm with both his hands behind his back to handcuff him, but he was not able to handcuff § 87(2)(b). PO Garcia could not recall what Lieutenant Schmidt was doing to detain § 87(2)(b) but said that at least six other officers came over to assist in the apprehension. PO Garcia got bumped out of the way by the other officers and got out of the way while the other officers placed § 87(2)(b) in handcuffs. PO Garcia did not recall who exactly these officers were and could not describe what actions they used to place § 87(2)(b) in handcuffs. PO Garcia never saw any officer punch § 87(2)(b) but stated that he punched § 87(2)(b)’s left tricep in an attempt to place the left arm behind his back. PO Garcia never kicked § 87(2)(b) or saw any other officer do this. PO Garcia did not recall if § 87(2)(b) was throwing punches at any of the officers. He stated that once he stopped trying to apprehend § 87(2)(b) he did not really see what was happening. While PO Garcia was trying to apprehend § 87(2)(b) he was saying things such as, “Stop resisting, give me your hands.” § 87(2)(b) never stopped resisting. PO Garcia never said, “Yeah we got your ass. Fuck you, you little bastard. Stupid” and did not hear any other officer say this. PO Garcia did not recall if § 87(2)(b) continued to resist after he was in handcuffs and did not recall seeing any additional force used against § 87(2)(b) after he was arrested. PO Garcia did not recall observing any physical injuries on § 87(2)(b) and did not see him at the precinct. He recalled that § 87(2)(b) was transported in an unmarked vehicle. PO Garcia recalled seeing an additional marked vehicle arrive on the scene but did not know who the officers were or what command they were from. After § 87(2)(b) was apprehended, Lieutenant Schmidt recovered a shotgun under a parked vehicle on the north side of West 117th Street between Madison Avenue and Park Avenue.

Officers Not Interviewed

§ 87(2)(g)

Medical Records:

The following is a summary of § 87(2)(b)'s medical records pertaining to his treatment at § 87(2)(b) on § 87(2)(b) (see enclosures 16a – 16i).

The FDNY Prehospital Care Report indicates that an ambulance was dispatched to the 32nd Precinct at § 87(2)(b), arriving two minutes later. § 87(2)(b), § 87(2)(a)

The Emergency Department Triage Assessment form indicates that § 87(2)(b) arrived at the hospital by "ambulance police vehicle" at § 87(2)(b), § 87(2)(b), § 87(2)(a)

§ 87(2)(b), § 87(2)(a)

§ 87(2)(b), § 87(2)(a)

§ 87(2)(b), § 87(2)(a)

Police Documents:

Roll Call

The Patrol Borough Manhattan North Anti-Crime (182) roll call indicates that PO Radoncic, PO Bolte and PO Maric were ALU Squad 1 and worked from 5:30 PM to 2:05 AM on November 12, 2006 (see enclosure 22a). The Patrol Borough Manhattan North Task Force (137) roll indicates that Lieutenant Schmidt was assigned as the platoon commander and worked from 5:30 PM to 2:05 AM on November 12, 2006 (see enclosure 23a).

SPRINT

At 11:29 PM a male caller § 87(2)(b) called and stated that males were running towards Lenox Avenue from 119th Street. One black, 20 or younger, was wearing a red jacket with the number 23 on the back.

At 11:30 PM, male caller § 87(2)(b) stated that there was one shot fired but he didn't know if there were any injuries or who was being shot at.

At 11:31 PM, 28LT1 10-84. Lieutenant stated that bystanders were coming from the 7th Avenue side.

At 11:40 PM, 25ST1 stated that all units were accounted for, one under by auto larceny.

At 11:45 PM, recovered a firearm at Park and 117th Street (see enclosures 18a – 18c).

Firearm Examination Report

This report indicates that the double barrel 12 gauge shotgun that was recovered was operable (see enclosure 19).

Arrest Disposition

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's CCRB History

This is § 87(2)(b)'s only CCRB complaint (see enclosure 4).

Officers' CCRB History

Lieutenant Schmidt has been on the force for eight years and has three substantiated allegations. In CCRB case # 200202279, Lieutenant Schmidt was substantiated for two allegations of abuse of authority § 87(2)(b) § 87(4-b), § 87(2)(g). Charges were recommended for all three allegations and Lieutenant Schmidt received command discipline B for the allegations of abuse of authority (see enclosure 2). PO Garcia has been on the force for eight years and has no substantiated allegations (see enclosure 3).

Conclusions and Recommendations

Undisputed Facts

There are several undisputed facts in this case. It is undisputed that a call was made regarding shots fired and one of the males was wearing a red jacket with a number on it. It is undisputed that § 87(2)(b) ran from the officers and was tackled to the ground by Lieutenant Schmidt. It is also undisputed that Lieutenant Schmidt and PO Garcia both tried to handcuff § 87(2)(b) and in the process, Lieutenant Schmidt punched § 87(2)(b) three times in the face and PO Garcia punched § 87(2)(b) in the tricep. It is also undisputed that several other officers arrived on the scene when Lieutenant Schmidt and PO Garcia were trying to apprehend § 87(2)(b). Finally it is undisputed that a 12 gauge shot gun was recovered in the vicinity of the foot chase on 117th Street.

Facts In Dispute

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that an officer, although he could not identify which one,

continued to punch him and an officer in plainclothes said, “Yeah, we got your ass. Fuck you, you little bastard. Stupid.” None of the officers admitted to using or observing any additional force against § 87(2)(b) after he was in handcuffs. None of the officers admitted to saying or hearing any other officer say, “Yeah, we got your ass. Fuck you, you little bastard. Stupid.”

Assessment of Evidence

§ 87(2)(g)

[REDACTED]

Allegation A: Lieutenant Christopher Schmidt used physical force against § 87(2)(b)

§ 87(2)(b) alleged that Lieutenant Schmidt tackled him to the ground and punched him in the face when attempting to place him in handcuffs. According to Patrol Guide Procedure 203-11, “All members of the service at the scene of a police incident must immediately establish firearms control” and “Only that amount of force necessary to overcome resistance will be used to effect an arrest” (see enclosure 1a). [REDACTED]

§ 87(2)(b) fit the description of one of the males involved in a call regarding a group of males with a firearm, and admitted to running from the police. Lieutenant Schmidt admitted to tackling § 87(2)(b) § 87(2)(g)

[REDACTED]

§ 87(2)(b) Lieutenant Schmidt also admitted to punching § 87(2)(b) in the face three times before placing him in handcuffs because § 87(2)(b) was resisting Lieutenant Schmidt’s and PO Garcia’s attempts to place him in handcuffs. Lieutenant Schmidt observed § 87(2)(b) with a shotgun when he was running from police and both he and PO Garcia stated that § 87(2)(b) was holding his waist while he was running. Both Lieutenant Schmidt and PO Garcia also stated that § 87(2)(b) would not give up his arms when they were trying to place him in handcuffs. § 87(2)(b), § 87(2)(g)

Allegation B: PO Wilfred Garcia used physical force against § 87(2)(b).

§ 87(2)(b) alleged that while he was being placed under arrest, officers were punching him. PO Garcia did admit to punching § 87(2)(b) in the left tricep to put his arm around his back. § 87(2)(b), § 87(2)(g)

Allegation C: An officer spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that while he was being handcuffed, a plainclothes officer said, “Yeah, we got your ass. Fuck you, you little bastard. Stupid.” § 87(2)(g)

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The officers who
were interviewed all stated that they did not say what § 87(2)(b) alleged or hear anyone else say it. [REDACTED]
§ 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation D: An officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that he was punched in the face after he was in handcuffed. § 87(2)(b) admittedly
stated that he could not identify or describe the officer who did this. § 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED] The officers that were interviewed all stated that they did not recall any additional force used
against § 87(2)(b) § 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]

Investigator: Date:

Supervisor: Date:

Reviewed by: Date:

Reviewed by: Date: